


**Indigenous Justice:
A Long and Winding Road**

Ted Palys
Professor, School of Criminology
Associate Member, Dept. of First Nations Studies

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Intro

- Thanks to Elders, guests
- Honoured to be invited to give this talk on Coast Salish traditional territory
- And especially in the Chief Simon Baker room of the Friendship centre

Indigenous Peoples and the Justice System

- I'm not corrections guy; role is to provide some background to where we are today
- Been doing this since the early 1990s
- Was involved as an observer when VATJS was being formed; worked with other communities for background research
- Been involved nationally and internationally on justice issues.

Indigenous Peoples and the Justice System

- Relationship between Indigenous Peoples and the justice system has not been a positive one
 - The police are the people who take away your children and protect non-Indigenous interests
 - The courts are the creations of government that ask Aboriginal peoples to show why they should have title, but never require the Canadian government to do the same

Failure of Canadian Justice

- “Over-representation” an issue after WWII
- Solicitor General (1967): *Indians and the Law*
- Indigenous people subjected to greater scrutiny as potential perpetrators; reduced scrutiny as victims
- Less likely to be represented; more likely to plead guilty; less likely to make a plea deal; more likely to be incarcerated; less likely to be offered parole/probation

Failure of Canadian Justice

- Various reports, inquiries and commissions that have looked into the issue:
 - Michael Jackson, *Locking Up Natives in Canada* (1989);
 - Nova Scotia, *Royal Commission on the Donald Marshall, Jr., Prosecution* (1989);
 - Alberta, *Justice on Trial (the Cawsey Report)* (1991);
 - Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba* (1991);
 - Government of Canada, *Aboriginal People and Justice Administration: A Discussion Paper* (1991);
 - Law Reform Commission of Canada, *Aboriginal Peoples and Criminal Justice: Equality, Respect and the Search for Justice* (1991);
 - Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (1996);
 - Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform, *Legacy of Hope: An Agenda For Change* (2004).
- The Royal Commission on Aboriginal Peoples’ report on justice – *Bridging the Cultural Divide* – cites more than 30 commissions and inquiries that came to the same conclusion.

The Conclusion

- As the federal Department of Justice explains on its Aboriginal Justice Strategy web page,
 - “The relationship between Canada’s Aboriginal people and the Canadian justice system has been an enduring and comprehensively documented problem, the complex product of disadvantaged socio-economic conditions, culturally insensitive approaches to justice, and systemic racism. Over the years, numerous public inquiries, task forces and commissions have concluded that Canada’s justice system has failed Aboriginal people at every stage. Aboriginal people have expressed a deep alienation from a system of justice that appears to them foreign and inaccessible.”

So What Do you do about it?

- Successive waves of policy
 - Indigenization: if we have more Indigenous participation, all will improve
 - Accommodation: system can flex to accommodate Indigenous differences (e.g., sweat lodges in prison, sentencing circles)
 - Parallel Systems: Indigenous communities can develop their own systems of justice that can run in parallel and cooperatively with the CJS

The Promotion of Aboriginal Justice

- 275 programs serving 800 communities
- Huge infrastructure built
- Evaluations reveal great success
 - Lower recidivism
 - Community building
 - Deliver this for less expense than CJS

Canada Not in a Vacuum

- Echoed by the UN *Declaration on the Rights of Indigenous Peoples*
- Article 5:
 - Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
- Article 34:
 - Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Lessons learned

- 1. Any justice system developments need to be community-driven and in accordance with community priorities: bottom up, not top down
 - The community has to buy in to it because it is only with the support of the community that the ultimate goal – to reintegrate offenders in the community where they can be “former” offenders – can succeed

Lessons learned

- 2. No program is an island
 - In Aboriginal justice, there have been too many missed opportunities, e.g., New West First Nations court created independently of VATJS
 - There are other agencies run by Vancouver’s Indigenous community who need to be on board and who can contribute
 - Community connections need to be explored and exploited

Lessons learned

- 3. Indigenous communities know what is best for Indigenous communities
 - “the feds know what is best for Indigenous peoples” is what’s gotten us into a lot of this mess.
 - Negotiation has to be with mutual respect
 - CSC authorities need to understand that while there will be many core concerns that are shared, it will look different because the needs will be different, the approach will be different. If it didn’t there would be no need for a healing centre Must be prepared to flex

Lessons learned

- Just to sum up, the further development of Aboriginal justice operating in parallel and in cooperation with the mainstream justice system is not only a right, but is also a good idea.
- I thank you again for inviting me to speak, and wish you well on your negotiations